10. The Cochin Tenancy Act (Amendment) Bill

Mr. M. Sivarama Menon *(Advocate-General):* Sir, On the last occasion I was discussing the principles contained in the Cochin Tenancy Act (Amendment) Bill and I was at the stage when I informed the Hon'ble Members that the provisions for the fixing of the fair rent are in the main based upon the provision contained in the Malabar Tenancy Act. Since the Bill has now been in the hands of the Hon'ble Members for a pretty long number of days, I do not think it will be fair on my party at this late hour of the day to consume more of the time of the House with my speech and thus divest the Hon'ble Members of the opportunity to take a decision one way or another with regard to the interim stages of this Bill. I may straightaway inform Hon'ble Members that Government do not pause this as haying uttered the last word upon each and every provision contained in this amending Bill and therefore Government are prepared to refer the Bill to a Select Committee for further consideration of the several points in issue. I want to make this statement in advance so that we may be able to do some tangible work in regard to these provisions in the Select Committee. Now there are 3 courses open to the Members—either to throw out, accept or suggest suitable amendments. But then the question is whether as a matter of fact after having bestowed considerable thought and attention upon this vexatious question of fixing the renewal fee it was not proper on the part of the House in allowing the Bill to go to the Select Committee in order to review the whole position. But this is a matter which is so very well-known that no new arguments can as a matter of fact be advanced by any advocate or any person who has been watching the course of tenancy legislation. There is enough literature about it. And the question does not admit the further argument except the consideration as to whether regard being had to all points of view this is the proper course to be adopted or not. Here in the Bill renewal fees is fixed as 2¼ times the difference between the fair rent of the holding and the Michavaram and interest on the Kanam and Puramkadam amounts. Now the Select Committee can consider whether this is not a very fair method of assessing renewal fees. If they have a different view they can discuss the point thread-bare and can devise ways and means by which conflicting interests of land-lords and tenants can be reconciled. I would therefore suggest to the Hon'ble House to allow this interim Select Committee stage be passed by agreeing with the Government and thus do some specific and useful work in the committee.

Mr. B V. K. Menon *(Secretary to Government):* I second the motion.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, I remember a saying that a mountain labour brought forth a mouse. But here I find a mountain's labour bringing forth a monster. The thing is this Sir. We had got a tenancy regulation Act II of 1090, which after 10 years of its working was found necessary to be amended both by the Jenmies and by the tenants. The First Council was at it, but could not turn out anything. In the second Council also it did not take any tangible shape. It was in the third Council that a very erudite committee was entrusted with this task, and on the committee there was representation of an expert nature, both on the tenant's side as also on the Jenmi side—I am referring to the Committee presided over by the late retired Chief Justice Rao Bahadur P. I. Varghese. It was a very competent committee with 2 expert members nominated specially Mr. P. Ramam Menon our Present High Court Judge representing the tenants and the late Mr. Kannambra Kunhunni Nayar representing Land-lords. The Committee reported in 1108 and in the Vrischigam sitting of that year the amending Bill was passed by the Council. But the present tenancy Act XV of 1113 was put on the statute Book of Cochin only late in 1113. The Bill that was passed by this House in Vrischagam 1108 was recommitted, Sir, only in 1113; *i.e.*, after a period of five years inordinate delay. That was a Bill which was passed after mature consideration of the various aspects of the tenancy problem by an expert Committee presided over by no less a person than an ex-Chief Justice of the High Court, I mean Rao Bahadur P. I. Varghese. It was kept not disposed of one way or other for five years. After a period of five years it was recommitted to the House and afterwards it became Act XV of 1113 which is our present Tenancy Act. One important thing that was contained in that Act is a beneficial provision with regard to Kanam tenants who had advanced almost the assignment value of the property in the shape of kanam amount. The provision in the old Tenancy Act II of 1090 with regard to the payment of renewal fee is that the tenant has to pay a renewal fee of 27½ per cent of the kanam amount and 15 per cent of the puramkadam if any. This provision was working great hardship to tenants who have advanced large kanam amounts and to give them some relief a provision to this effect was added in section 28 of the present Tenancy Act. "Nothing in this section shall make the kanam tenant liable to pay as renewal

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fee anything more than 5 per cent of the kanam amount and puramkadam, if any, when there is no michavaram payable under the kanam to be renewed, or it is less than 12½ per cent of the pattam fixed therein." This provision immediately it became law, was put to test in our law Courts and the Hon'ble High Court of Cochin interpreted this provision against the interests of the tenant. The said decision is reported at 30 Cochin 473. I am not finding fault with the decision of the High Court as it did not confer the benefit of the amendment to the tenants. According to the definition of the term "Michavaram" as it existed then it was not possible to exclude the remissions given in lieu of the tax payable by the tenant under the kanam document but the High Court interpreted the definition as taking in tax also. This decision was followed in another case also and the benefit that was intended to be given by the proviso in section 28 of the Tenancy Act referred to earlier was not to be had for the tenants. That was settled once for all. I expected, Sir, with that settlement of the matter and the Government's eagerness of holding the balance between the two parties, they would come forward with a proper amendment. They did not do it. One of my predecessors representing a constituency, of my Taluk, Mr. Iyyu, immediately after the passing of the decision above referred to came forward with an amending Bill and that was considered in 1115 Vrischigam and Makaram when there was a threadbare discussion of the whole matter and the only amendment which that Bill contained was a provision to get over the difficulty created by the 30 Cochin decision. Mr. Iyyu's amendment was to make suitable changes in the definition of the term "Michavaram" in the Act. He in that amendment had followed almost word for word the definition of the term "Michavaram" in the Malabar Tenancy Act. That amendment was passed by this House. Unfortunately for the Kanam tenants that Bill was not assented to by His Highness the Maharaja who vetoed the Bill. It was vetoed; but we had the benefit of knowing the fate of the Bill very soon. Immediately followed another Bill which was sponsored by Mr. T. P. Poulose, the then Hon'ble Member for Kanayannur. This was sent to a Select Committee on 11th August 1941. Its report was ready in 1118 Meenam and when the Select Committee report was ready it was then that the Advocate-General got up in his seat and said that now that the Verumpattamdars Act has been passed, the Tenancy Regulation needs not only this amendment but various other amendments also and requested the Hon'ble Member to defer the presentation of the Select Committee Report and on the definite assurance got on questions and answers that if not in the budget session following, latest by Vrischigam next, the Bill will be ready and Government will bring the same before this House as a Government measure. I am not complaining that the Government did not do anything as promised. They did appoint an Ad Hoc Committee and it reported after considering the question in great detail. But the learned and very useful report of this Committee has been brushed aside by the Government. That Ad Hoc Committee it is noteworthy consisted of men like Mr. Ambadi Sankara Menon, an ex-Advocate General of Cochin, who was the Deputy President of this Hon'ble House and a man who had interested himself in Tenancy Matters. This Committee had after visiting various parts of the State and gathering evidence on all material points which runs into so many pages, came to the conclusion that as far as those tenants who have advanced very large amounts of money on kanam tenure in the shape of *kanartham* do suffer hardship at renewals and in their case as well as in the case of Nerkanam tenants some substantital relief is necessary and should be given and that has been granted by the report of the Committee and the draft Bill accompanying that report. What the Committee reported was that the renewal should be fixed on some definite data having a relation with the income from the property demised. The Committee decided and reported that the kanapattam fixed on the demise deed will be a scientific basis for fixing the renewal fee payable in all cases though in certain cases the quantum of renewal fee thus fixed will be higher than the 27½ per cent which is in vogue now. In such case the tenant was given the option to pay the lesser amount by the Committee. And they had sent up the report and a draft Bill some time ago. On that report the committee, of course, had necessarily to take some time because they were on a very contentious matter. There is no complaint about the time taken by the Committee. But in between the report of the committee and today about an year has elapsed. I can attribute this only to the unwillingness on the part of the Government to do justice towards the tenantry whether kanam or verumpattam. Unfortunately it has become so. Anyhow, Sir, the history is so depressing that repeated requests had to be made for the acceleration of the speed on the part of the Government in getting through this Bill. In the provisional agenda for this Session this Bill did not find a place. It was subsequent to certain things done by me that it was included in the final agenda. I am thankful to whoever is responsible for this happy event.

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Wonder of wonders, surprise of surprises, when the committee had reported giving the Government a draft Bill touching all the necessary changes, the Government brushes aside the whole report, calls out partially one of the recommendations of the Committee and gives the house a Bill containing two clauses copied verbatim from the Act in working on the other side of the Bharatha River—in British Malabar while the committees draft bill contains very many sections. They are not unimportant; they are very important things if the amendment as they wanted the bill to be amended was to be had. All of them are found not necessary by our Government as it exists today projenmi. What is done by the Government is to accept an argument of the committee which was the argument of that Select Committee that examined the earlier Bill of Mr. T. P. Poulose namely that it is unscientific to fix the quantum of renewal fee on the basis of the kanam amount. It is characterised as arbitrary. An attempt at a scientific fixation of the quantum of renewal fee is attempted by the Government. This committee had stated that it is desirable to fix the quantum of renewal fee, having a bearing upon the yield from the property and in accordance with that view of theirs they fixed it at a certain proportion to the actual yield from the property and the committee reported that the kanapattam fixed in the document may be fixed as the renewal fee payable at the time of renewal. The decisions of our Hon'ble High Court are to the effect that the kanapattam ranges from one-half to two thirds of the verumpattam. So the fixing of the renewal fee at the kanapattam fixed in the document establishes a relationship between the renewal fee and the yield of the property. So the recommendation of the committee in this behalf could be and should have been accepted and acted upon. The kanam tenant would, easily and without any outside help, have known the amount of renewal fee payable by them. But instead the Government Bill contains a provision for fixing the renewal fee which will lead to numerous litigation as the experience of British Malabar working the identical provision there has clearly demonstrated. Hence it is, Sir, that I said at the outset that a mountain in labour brought forth not a mouse but a monster..... .....

Mr. Puthur Achutha Menon (*Kattur*): May I know, whether he is willing to refer the bill to the Select Committee. If he is for it we will be losing that opportunity now and there will be a delay of 3 months.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: I have no fears like that. You are judging others by your own standard. I am on a very serious question relating to the tenants and you are on the question of running home at 5.

Mr. Puthur Achyuta Menon *(Kattur)*: We are concerned more with the lot of the tenants than with your speech.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: If you feel troubled by my noise you have better remedies for that.

Mr. Puthur Achutha Menon *(Kattur)*: It is not myself, but the public of Cochin who wants the legislation.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: Well, the day has not come when you can represent the Cochin Public. And who ever stands in the way of the necessary legislation.

I submit, Sir, the suggestion seems to be that the group arrangements have decided that this matter must go to a Select Committee. I may also as the last resort agree to do so.

It is better that this ill-digested, unwanted piece of legislation does not go to be considered by a Select Committee as it is not going to be of any use at all. And therefore the appropriate attitude to be adopted by every section of this House according to me is to reject this Bill. Surely its consequence will be that the Government may not hereafter come with their Bill, and if we bring in a bill even though it will be passed here, it will not be assented to by His Highness. I am not unaware of that. But all the same the spade has to be called a spade. There is no use of calling it by any other name however euphemistic it may be.

Mr. Puthur Achutha Menon (*Kattur*): That does not require so much time.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: Since there is so much of annoyance created by my voice to my honourable friend the studied interrupter, not that I am responsible for it, but because it is the fag end of the session and they have taken a decision without thinking over the matter and if any one rises against it, their attempt will be, as has been exhibited now, to heckle him.

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Mr. Puthur Achyuta Menon *(Kattur):* We have thought over it and we have come to the conclusion.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I have no quarrel with your exparte decisions. What I do is according to my lights. The essence of democracy is respect for the opponents' views and therein lies its success. You say.....

Mr. Puthur Achutha Menon *(Kattur):* But not at the expense of many.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* All right, Sir. So my respectful submission is that if the Hon'ble Member for Law will agree that we can make violent changes at the Select Committee stage with regard to the method of finding out the fair rent and ascertain the quantum of renewal fee payable, I have no objection, Sir, in sending this Bill to a Select Committee. If other methods there are embodied in the draft Bill, can be suggested to find out the fair rent than it may as well go to the Select Committee; but if such things are not possible—and we have the experience, Sir, that when necessary changes are made in the Bill at the Select Committee Stage and if such amendments are not agreeable to the Government, they short circuit the whole thing and say that they are not going to proceed with the Bill—there is no use of sending this Bill to the Select Committee. This is our limitation. If my esteemed friends on this side are anxious that the Bill should go to a Select Committee and that the committee has got the power to thrash out a workable Bill, I am not going to be an instrument of having their purpose in this behalf thwarted. I will contribute my best in the way in which I can wherever possible. I have done.

Mr. Paramel Ipe Ipe *(Kunnamkulam):* I too oppose the idea of sending this bill to a Select committee. My main apprehensions in passing that is that in according to the idea of sending it over to the Select Committee are we not conceding to some extent that at least the principle embodied therein are accepted by this House. The very fact that fair rent has to be fixed at every time the renewal fee has to be fixed means a litigation every time the renewal fee is fixed. Now with the Bill between the landlord and the tenant, what I would apprehend is that for every 12 years or for any cycle of years—it may be longer than 12 years—the quantum of renewal fee payable will be settled only by litigation. That being the view, I would rather stand contended with an arbitrary mode of fixing the renewal fee. Now in discussing it in our Select Committee, can we completely throw away the idea of fixing the fair rent. If that be the position, I have no objection. But if on the other hand the idea of fixing the fair rent cannot be touched upon and only what we can do is we can choose the proportion of the fair rent to the renewal fee payable, there is no meaning of sending it over to the Select Committee.

Mr M. Sivarama Menon *(Advocate-General):* I may just inform the Hon'ble Member for Kunnamkulam that when we took evidence at Kunnamkulam, the majority view was that the present provision in the Act basing renewal fee at 27½ percent should not be disturbed.

Mr. P. Govinda Menon *(Ernakulam):* Mr. President, Sir, the principle of the Government Bill is that the renewal fee shall be on the basis of the profits of the property and not a percentage of the kanam amount. The principle is acceptable to this side of the House and we will be supporting the motion made by the Government for referring it to the Select Committee. But it does not follow that the profit of the property shall be as fixed in the bill now before the House. In referring the bill to a Select Committee, this House will accede to the principle of fixing the renewal fee payable by a tenant at the completion of the period of 12 years, the basis to be taken into account shall be only the profit derived by him whether that profit shall be one year's kanappattam as decided by the Government committee whose report is before the Government or it shall be 2¼ times the fair rent or any other thing as fixed in this Bill is for the Select Committee to decide. With this statement, Sir, I submit that this section of the House and I believe the whole House will be for supporting the motion for sending the Bill to a Select Committee.

Mr. M. Sivarama Menon *(Advocate-General):* Sir, I have already stated on the floor of this House when I made the motion for the introduction of this Bill that Government in accepting the principle that renewal fee is to be based upon the income of the property have stated that they have adopted a certain principle which is in vogue in British Malabar. The principle of the Bill is that the percentage basis should be done away with and the renewal fee may be based upon the income or profit or whatever it be. This is the only principle involved in the Bill and there is no occasion to raise the question as to whether the Select Committee would have the

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power to alter the mode of calculation of the fair rent for purposes of renewal fee. There is no point in that argument and the whole question is whether the existing basis of calculation of renewal fee should be changed or not. I have nothing further to add.

Motion, put and carried

Secretary to the Legislative Council: The title of the Bill is the Cochin Tenancy Act (Amendment) Bill.

Mr. M. Sivarama Menon (*Advocate-General*): Sir, I beg to move the Cochin Tenancy Act (Amendment) Bill may be referred to a Select Committee consisting of the mover, the Diwan Peishkar, Messrs. K. T. Achuthan, P. Mani, P. Kumaran Ezhuthassan, C. N. Ittiravi Nambudiripad and Paramel Ipe Ipe.

Rao Sahib A. Madhava Prabhu *(Diwan Peishkar):* I second it.

Mr. Parambi Lonappen (*Irinjalakkuda):* I would suggest the name of Mr. P. Mohammad Ashroff so that one from the Nationalist Party may be included.

Mr. President: Yes.

The committee will submit its report within 3 months and the Advocate-General will be the Chairman of the Committee.

4. Announcement by the President about final elections to the Constitutional Advisory Committee

I have to announee that Mrs. T. Francis and Mr. P. Kumaran Ezhuthassan have withdrawn their candidature to the Constitutional Advisory Committee. There is, hence, no need for an electio n, the remaining four members being nominated. Rao Bahadur T. K. Nayar, Rao Sahib K. Ayyappan, Mr. C. R. Iyyunni and Mr. P. Govinda Menon.

The House rose for the day at 4-55 p.m.

N. S. RADHAKRISHNA SARMA

Secretary to the Legislative Council

APPENDIX I

(Please see answer to Question No. 318)

Statement showing particulars of land acquisition cases in which the District Courts have decreed excess compensation

ANJIKAIMAL DISTRICT COURT

Serial No.	*L. A. Case No.*	*Nature of decree*
1	18/16	Rs. 10 paid in excess of the award for damage to a tank
2	20/16	Rs. 847 10 9 paid in excess of award for buildings
3	15/17	Rs. 127 10 5 paid in excess of the award for buildings
4	22/17	Rs. 103 8 0 paid in excess of the award
5	24/17	Rs. 40 a cent raised to Rs. 50 a cent
6	47/17	Rs. 30 a cent raised to Rs. 40 a cent
7	49/17	Rs. 40 a cent raised to Rs. 50 a cent
8	60/17	Rs. 240 excess paid for land and Rs. 30—10—0 for improvements.
9	13/18	Award enchanced by Rs. 228
10	14/18	do. by Rs. 165
11	16/18	do. by Rs. 483
12	26/18	Rs. 75 a cent raised to Rs. 100 a cent
13	10/19	Rs. 124-12-0 more was paid
14	11/19	Award enchanced by Rs. 68 14 3
15	12/19	do. by Rs. 299 5 0
16	16/19	do. by Rs. 353 12 0
17	19/19	do. by Rs. 161 1 0

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